IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA ANDERSON/GREENWOOD DIVISION

Carlos McMichael,) C/A No. 8:13-263-TMC-JDA
Plaintiff,) C/A No. 8.13-203-11viC-JDA
v.	ORDER
)
John Pate, McKendley Newton,	
Aurther Jordan, Walter Worrock,)
Joseph DeLoach, Thomas E. Byrne,	
M.D., A. Jamison, Officer Chaney,)
G. Donaldson, Orr, and John Does,)
in their individual and official capacities,)
)
Defendants.)
	_)

Plaintiff Carlos McMichael ("McMichael") filed this action pursuant to 42 U.S.C. § 1983.¹ On April 30, 2014, the magistrate judge filed a Report and Recommendation ("Report") in which she recommended that Defendant John Doe be dismissed. (ECF No. 83). The parties did not timely file objections.

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). In the absence of objections, this court is not required to provide an explanation for adopting the Report. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th

¹McMichael filed this action pro se, but he has since retained counsel. (ECF No. 71).

Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file

specific written objections to the Report results in a party's waiver of the right to appeal the

district court's judgment based upon that recommendation. 28 U.S.C. § 636(b)(1); Thomas v.

Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v.

Schronce, 727 F.2d 91 (4th Cir. 1984).

As noted above, the parties did not timely file any objections to the Report. Accordingly,

the court has reviewed the Report for clear error and has not discerned any. Under Rule 4 of the

Federal Rules of Civil Procedure, "If a defendant is not served within 120 days after the

complaint is filed, the court on motion or on its own after notice to the plaintiff - must dismiss

the action without prejudice against that defendant or order that service be made within a

specified time." Fed.R.Civ.P. 4(m). McMichael was given additional time to attempt to serve

John Doe. The new deadline was April 25, 2014, but there is no evidence McMichael has

effected service on John Doe.

Accordingly, after a thorough review of the Report and the record in this case, the court

adopts the Magistrate Judge's Report (ECF No. 83) and incorporates it herein. Therefore,

Defendant John Doe is **DISMISSED** without prejudice.

IT IS SO ORDERED.

s/Timothy M. Cain United States District Judge

May 20, 2014

Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4

of the Federal Rules of Appellate Procedure.

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